

FISCAL NOTE

Bill #: SB0299

Title: Contractor-subcontractor indemnification

Primary

Sponsor: Bill Glaser

Status: As Introduced

Sponsor signature

Date

Chuck Swysgood, Budget Director

Date

Fiscal Summary

	<u>FY 2002 Difference</u>	<u>FY 2003 Difference</u>
Expenditures:		
Various, particularly State Special Revenue (02)		Significant but unknown
Revenue:	0	0

Net Impact on General Fund Balance: It is difficult to project the impact on the general fund. If HB 299 passes, the Risk Management & Tort Defense Division will have to pay more money from the state self-insurance fund for claims/lawsuits arising out of construction projects; therefore, the division will have to increase general fund assessments.

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
X		Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget	X		Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached	X		Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

1. It is not known, nor can it be predicted, how many claims/lawsuits will arise or how much these will cost. However, it is anticipated that costs will increase significantly.
2. The bill aims at eliminating a shift of risk and liability by indemnification for all acts until they are shown to be negligent, reckless or intentional. If the above assumption is correct, it will force any contested action of financial significance into the court system for litigation to determine liability due to negligence, recklessness etc.

Department of Transportation (MDT)

3. Currently claims of damage or injury are handled through the contractor and the contractor's insurance company. MDT has no way to know how many claims or what dollar value are processed on an annual basis.

4. It is known that in any given year hundreds of small claims are processed for broken windshields and headlights, asphalt splashed on cars, or traffic paint sprayed on vehicles. Under the current indemnification process the contractor is responsible for the damage claim. Under the proposed legislation, it becomes unclear.
5. By way of example, in the 2000 construction season prime coat (asphalt) was sprayed on a gravel surface as per the contract. The work was done just prior to a rain and just prior to a weekend. The rain came and flushed the prime coat to the surface spraying some 300 cars with asphalt. The resulting claims cost over \$300,000 to clean up the damaged vehicles. Under current contract language, the contractor and his insurance company take care of the claims. Under the proposed legislation, the contractor would likely claim it is not his fault--he just followed the contract. The state would claim there was some recklessness or negligence involved in the application process.
6. Where there is significant property damage or serious injury, the issue of negligence or recklessness will surely be litigated.
7. Current MDT legal staff cannot handle the additional work. The additional workload would have to be contracted out at a cost of \$100 to \$150 an hour.
8. All costs incurred in MDT for this effort would come out of state special revenue. It is doubtful claims or legal costs would be federal aid eligible.
9. It is impossible to predict, but just the small claims could easily add up to over \$1 million in any given year. Any large claim would surely be litigated, adding several hundred thousand dollars per event.
10. The frequency of claims or incidents would likely go up since the onus for prudent performance on contract work would be removed. Contractors would be less responsible for their actions.

FISCAL IMPACT:

	<u>FY 2002 Difference</u>	<u>FY 2003 Difference</u>
<u>Expenditures:</u>		Significant but unknown
<u>Funding:</u>		
Various, most particularly State Special Revenue (02)		Significant but unknown
<u>Revenues:</u>	0	0
<u>Net Impact to Fund Balance (Revenue minus Expenditure):</u>		
Various		Significant but unknown

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local governments would be faced with similar concerns on any contracts they execute.

LONG-RANGE IMPACTS:

Unknown at this time.

TECHNICAL NOTES:

1. The language of this bill is confusing. Wording relating to a "party", the "other party", and "another party" leaves the reader confused.